

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2009-KA-00538-COA

MATTHEW NASH

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT: 03/20/2009
TRIAL JUDGE: HON. FRANK G. VOLLOR
COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: CLARENCE T. GUTHRIE III
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: STEPHANIE B. WOOD
DISTRICT ATTORNEY: RICHARD EARL SMITH JR.
NATURE OF THE CASE: CRIMINAL - FELONY
TRIAL COURT DISPOSITION: CONVICTED OF MURDER AND
SENTENCED TO LIFE, SHOOTING INTO
AN OCCUPIED DWELLING AND
SENTENCED TO TEN YEARS, AND TWO
COUNTS OF AGGRAVATED ASSAULT
AND SENTENCED TO TWENTY YEARS
FOR EACH COUNT, WITH THE
SENTENCES TO RUN CONSECUTIVELY
ALL IN THE CUSTODY OF THE
MISSISSIPPI DEPARTMENT OF
CORRECTIONS
DISPOSITION: AFFIRMED – 01/11/2011
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE MYERS, P.J., IRVING AND GRIFFIS, JJ.

IRVING, J., FOR THE COURT:

¶1. A jury in the Warren County Circuit Court convicted Matthew Nash of murder, shooting into an occupied dwelling, and two counts of aggravated assault. The circuit court

sentenced him to life in the custody of the Mississippi Department of Corrections for the murder, to ten years for the shooting into an occupied dwelling, and to twenty years each for the aggravated-assault convictions. The circuit court ordered that the sentences run consecutively, so Nash will have to serve a sentence of life plus fifty years.

¶2. Nash's appellate counsel, who is different from his trial counsel, has filed a brief in accordance with *Lindsey v. State*, 939 So. 2d 743 (Miss. 2005), alleging that there are no arguable issues to present on appeal. The State also notes no arguable issues. Nash's counsel filed the brief on March 8, 2010; therein, counsel avers that Nash has been given a copy of counsel's brief, a copy of the record, and a transcript of the trial proceedings. Nash's counsel also states that Nash has been informed of his right to file a pro se brief to appeal his conviction. Nash has not filed a pro se brief.

¶3. This Court has made a diligent search of the entire record, and we have found no error in the circuit court's proceedings. Therefore, we affirm the judgment of the circuit court.

FACTS

¶4. On June 16, 2007, Justin Maurice Harris had an altercation with Anthony Trevillion or Armond Trevillion at The Biscuit Company, a nightclub in Vicksburg, Mississippi. The altercation turned physical, and Harris and several other individuals were thrown out of the club. There were several different accounts of what happened at the club; what is clear is that Harris and his brother, Jarvis Bowman, were both at the club and were evicted therefrom, along with the Trevillion brothers. Some time after leaving The Biscuit Company, Harris, Bowman, and a family friend, Garrod Bunch, went to The Smoke Break, a convenience store. While they were there, Anthony and another individual arrived at the

store. Bowman testified that Anthony and Harris “looked at each other” and acted as though they might fight, although nothing further happened at The Smoke Break. Thereafter, Harris, Bowman, and Bunch went to Harris and Bowman’s home on Grammar Street in Vicksburg. In the early morning hours of June 17, 2007, Harris was shot and killed by Anthony and Armond after Harris exited his house to speak with Nash.

¶5. Nash, who is related to both Harris and Anthony, was not at The Biscuit Company or The Smoke Break. However, Nash learned of the fight that had taken place at The Biscuit Company. According to Linda Miller, on June 16, 2007, presumably after the fight at the nightclub, Nash asked her where Harris lived. Miller testified that she took Nash to Harris’s home and then left with friends to go to her home. Miller stated that she and her friends heard gunshots approximately ten minutes later.

¶6. Bowman admitted that he and Harris had an argument over what had happened at The Biscuit Company after they returned to their home. Bowman testified that after he fought with Harris, Nash approached the house and came up on the porch. According to Bowman, the Trevillion brothers were behind Nash. Bowman testified that Nash told Harris that he did not have any problem with Harris; within seconds, Bowman realized that the Trevillion brothers had firearms. Bowman warned Harris about the firearms and then ran into the house. Bunch, who was nearby, ran into the kitchen and hid behind an icebox.

¶7. Bowman testified that the Trevillion brothers began shooting within seconds of Nash speaking to Harris. Harris was shot multiple times, including a fatal shot to the left side of his torso. The brothers shot into the house multiple times. When the police examined the house, they found only one room that had not been penetrated by bullets. At least one bullet

was stopped by the icebox that Bunch had hidden behind. By all accounts, Nash left the porch as the Trevillion brothers started firing. According to Nash, who testified at trial, Anthony and Armond were firing into the house as Nash left with a third Trevillion brother, Alonzo Trevillion. Nash claimed that he only went to the house to speak with Harris and that he did not know that Anthony and Armond were going to open fire on Harris.

¶8. Claudia Hester lived across Grammar Street from Harris and Bowman. She testified that she looked outside early that morning and saw three individuals walking down the street. She identified Nash as one of the three and testified that he was walking behind the other two, who were carrying long firearms; she testified that she does not know much about firearms and that the objects might have been rifles or shotguns. It later became apparent that one Trevillion brother was wielding a shotgun and the other used a rifle. Hester testified that she remembered Nash in particular because he turned and made eye contact with her. Hester called 911 because she saw the firearms.

¶9. Nash, Armond, Alonzo, and Anthony were all indicted together. Nash was first tried in June 2008, but a mistrial was declared because the jurors could not reach a unanimous verdict. Nash was retried in February 2009 and found guilty of all four counts against him.

¶10. Additional facts, as necessary, will be related during our analysis and discussion of the issues.

ANALYSIS AND DISCUSSION OF THE ISSUES

¶11. When counsel believes that there are no arguable issues for appeal, the proper procedure is to file a brief in accordance with *Lindsey*, as counsel has done in the present case. Having reviewed the record, we find no error in the circuit court's proceedings.

Accordingly, we affirm the circuit court's judgment.

¶12. THE JUDGMENT OF THE WARREN COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE OF LIFE, SHOOTING INTO AN OCCUPIED DWELLING AND SENTENCE OF TEN YEARS, AND TWO COUNTS OF AGGRAVATED ASSAULT WITH A SENTENCE OF TWENTY YEARS FOR EACH COUNT, WITH THE SENTENCES TO RUN CONSECUTIVELY ALL IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO WARREN COUNTY.

KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR.